STATE OF RHODE ISLAND
PROVIDENCE, SC.

RHODE ISLAND DEPARTMENT :
OF HEALTH, BOARD OF MEDICAL :
LICENSURE AND DISCIPLINE :
:
IN THE MATTER OF :
GANDHI DRAK, M.D. :
LICENSE NUMBER MD 10506 :

ADMINISTRATIVE DECISION

This matter came before a designated hearing committee of the Board of Medical Licensure and Discipline (hereinafter "Board") on April 2, 4 and 7, 2003. The hearing was precipitated by the State's investigation of a complaint relative to Respondent's care and treatment of a particular patient. The Respondent was present at the hearing and represented by counsel.

TRAVEL AND FINDINGS OF FACT

The Specification of Charges dated March 27, 2003 alleges that the Respondent has been guilty of unprofessional conduct in violation of section 5-37-5.1 (State's 2). In particular, the Specification alleges that the Respondent made inappropriate overtures to a male patient, overstepped the patient-physician boundary limitations, and that he directly lied about his actions with respect to the patient when interviewed by an Investigating Committee of the Board.

The Specification of Charges was preceded by a Summary Suspension Order issued by the Director of Health dated March 28, 2003 wherein she found the Respondent unfit to practice medicine and an imminent threat to the public. The Director summarily

suspended the Respondent's license to practice medicine effective March 18, 2003 (State's 3).

The facts surrounding the issuance of the Summary Suspension Order and the Specification of Charges were the subject of the hearing before the Board.

The State presented evidence (largely through the testimony of the Respondent) that the Respondent is a native of Syria. The Respondent studied medicine in Damascus and Paris prior to becoming licensed in Rhode Island. The Respondent came to Rhode Island in approximately 1996-97. He applied for, and received, a J-1 Visa from the Immigration and Naturalization Service with the assistance of the Department of Health. The condition of the Respondent's J-1 Visa was that he work in the United States, providing medical care to "underserved patients". To fulfill that responsibility, the Respondent took a medical position with the Memorial Hospital working at the Notre Dame Ambulatory Care Clinic in Central Falls, Rhode Island.

It was at Notre Dame that the Respondent first met the patient in question. The patient's treating psychiatrist, who testified at the hearing, enlightened the Board as to the patient's pertinent mental health history. The psychiatrist testified that the patient had been diagnosed as a schizophrenic in his native Cape Verde Islands sometime in the distant past. Haldol had been prescribed to control his illness. Thereafter, the patient moved from Cape Verde to Bridgeport, Connecticut and continued seeing a psychiatrist there. In 1993, the patient moved from Bridgeport to Rhode Island, whereupon the psychiatrist took up his care. The patient was twenty-two (22) years old at that time. The doctor testified that since prior to coming to this country, the patient's mental illness has been under control. The patient had exhibited no signs of illness from 1991 until June,

2002. At some point, in fact, the doctor had suggested that he stop taking Haldol altogether as he was asymptotic for so long a period of time. The patient declined to do so for fear of reverting to his prior state of schizophrenia. The patient's diagnosed mental illness is irrelevant to the events that transpired with the Respondent, except to note that the Respondent was aware of the patient's diagnosed fragile condition of schizophrenia at all times pertinent to the case herein.

The patient became a routine patient at Notre Dame Clinic for reasons unrelated to his psychiatric condition. The clinic responded to his physical medical needs. The Respondent and the patient each testified before the Board giving different versions of the events.

The Respondent testified that he and the patient first met each other in January, 2002 when the patient was being seen by another physician at the facility, a female. The Respondent testified that the other doctor called him in the room to consult with him about the patient because he was her preceptor. He testified that he did not examine the patient or render any medical advice at that time.

The patient stated otherwise. He testified that after being examined for a sore throat or a sore foot (he couldn't remember), he specifically requested to speak with a male doctor in January, 2002. His treating physician summoned the Respondent. The patient, who is thirty-one (31) years old presently, testified that he is a virgin who very much would like to get married and raise a family. The concern that he had, which he addressed with the Respondent on that date, was that he is not circumcised. He inquired of the Respondent whether, that being the case, he could have children and whether his future wife might be susceptible to infection as a result. He testified that the Respondent

examined his penis and told him not to worry, that there would be no problem. The Respondent, testifying twice at the hearing, denied this encounter.

On or about February 25, 2002, the patient returned to the clinic complaining of a sore throat or pharyngitis. The Respondent testified that he examined the patient relative to those symptoms and left the room to make a note of the visit and to obtain some cough medicine and/or other medication for the patient. Upon his return to the room, the Respondent testified that the patient disclosed that he was having problems in his genital area with an irritated penis. The Respondent said that he questioned the patient concerning his sexual encounters with women and with men and examined his genitalia for symptoms of disease. He said the patient volunteered that he masturbated frequently. The Respondent then told him to masturbate less frequently and to use a lubricant. The Respondent testified that the patient seemed upset that the Respondent had intimated that he might be a homosexual. The Respondent stated that the patient then left the clinic, but that he, the Respondent, felt that he had injured the patient's feelings. There were no office notes supporting the patient's second complaint or the conversation the Respondent had with him. The Respondent testified that the patient's complaints relative to his penis were "minor" and secondary to his sore throat. It was a mistake not to chart them, but he said it was something that he overlooked.

The patient's testimony differs considerably. The patient testified that he sought treatment from Respondent in February 2002 for a sore throat. The Respondent gave him a physical examination, and while listening to his heart, the Respondent touched the patient's penis with his free hand. The Respondent then asked the patient if he "loved men or women". The patient responded that he loved women, not man. But he said that

the question posed by the Respondent made him upset. He wondered what he had done that would cause Respondent and, perhaps, other people to think he was a homosexual. The patient emphatically denied having or making any complaint about an irritated penis or other related problem on that date.

It is undisputed from the testimony of both the Respondent and the patient that the Respondent contacted the patient at the patient's home that evening. Prior to telephoning the patient on February 25, 2002, the Respondent and patient had met each other only twice – at the January consultation and at the examination of the same date. They had no familial relationship at all. The Respondent testified that he felt he had injured the patient's feelings at the examination by inquiring as to the patient's sexual conduct and orientation. He stated that he got the patient's telephone number from the patient's record and called him to apologize. The Respondent did not call the patient from the hospital, but rather from his cell phone (State's 6, cell phone records of Respondent identifying his call to the patient's home). The patient testified that the Respondent called offering to "help" him with his problems. The patient was pleased. The Respondent then asked the patient if he would care to have the Respondent pick him up at the patient's home and go for coffee or a drink and talk about the patient's problems. The patient agreed and the Respondent came by in his car and picked him up.

Here, again, is where the stories told by each individual diverge. The Respondent testified that he took the patient to the Respondent's home. There, he stated that he did attempt to "touch" the patient, but the patient immediately backed off and asked to be taken home. At that point, the Respondent testified that he realized he had made a

mistake, and he took the patient back home as requested. He denies in substantial part the testimony of the patient.

The patient testified that he was taken by the Respondent to the Respondent's home. There the Respondent offered him juice and a pill. The Respondent did not talk about the patient's problems, but rather put some pornographic videos on the television. One of the movies was of women with men, another one depicted men having sex with men. The Respondent then asked the patient to give him a massage. The patient testified that he was afraid. He said that because he was afraid, he did quickly "1,2,3" rub the Respondent's shoulders and back from behind. The Respondent, wearing gloves, then unzipped his fly and unzipped the patient's fly. The patient testified that the Respondent then took the patient's penis out of his pants and attempted to "masturbate" him. The patient became more nervous. He asked to be taken home. He made excuses to go home. He told the Respondent that he needed to return home to take medication, that he masturbated all the time and that he would meet the Respondent on the following Sunday in order to spend time with him. That patient stated that these statements were lies told by the patient in an effort to encourage the Respondent to take him home. The Respondent then drove the patient home. While doing so, the patient testified that the Respondent kept reaching over and trying to touch his penis, but the patient resisted, finally arriving home. The patient did not meet with the Respondent again.

The patient's treating psychiatrist testified that he has been seeing the patient regularly about once every quarter to monitor his schizophrenia and his medication. In all of the years from 1993 through Spring of 2002, the patient was asymptomatic and "extremely stable", "very pleasant" and "religious". In March, 2002 the patient saw the

psychiatrist for a regularly scheduled visit. The psychiatrist testified that the patient was "his pleasant self", but he was noticeably anxious and agitated. The psychiatrist wanted to increase his dosage of Haldol. The patient declined, but when he was leaving the office, he said: "Sometimes people make decisions in life that they have to live with". By the time the patient returned to the psychiatrist's office in June, 2002, he was clearly "decompensating". He was nervous, agitated and loud. The patient finally told the psychiatrist about what had happened with the Respondent. The psychiatrist wanted to file a complaint, but the patient initially said he didn't want to pursue it. He was given an increase in his medication to help him remain calm. Eventually, three weeks later, the patient advised the psychiatrist that he wanted to pursue the complaint, so "it wouldn't happen again".

Upon receipt of the patient's complaint, the Board asked the Respondent to provide his version of the facts. By letter dated October 11, 2002 (State's 5), the Respondent vehemently denied that he had ever met the patient outside the clinic visit of February 25, 2002. He specifically denied calling the patient, meeting the patient, taking him to his home, and/or engaging in any sexual misconduct. Only after the Investigating Committee of the Board produced cell phone records establishing that he had telephoned the patient at home did the Respondent finally admit that he had phoned and met with the patient at Respondent's home.

After it's investigation, the Board referred Respondent to the Physicians Health Committee of the Rhode Island Medical Society (See State's 8). In the meantime, however, the Respondent had already arranged for an assessment at the Professional Renewal Center (PRC) in Lawrence, Kansas. Respondent underwent an assessment

period of one week, then undertook a two-week treatment regimen. The PRC report is admitted into evidence as State's 7. The report discusses in detail the discrepancies between Respondent's story and that told by the patient without coming to a conclusion as to the accuracy of either. Based upon the results of a multi-disciplinary team (MDT) evaluation and two-weeks active treatment, the PRC recommended that Respondent be permitted to return to work as a physician under limiting conditions, i.e. that he attend weekly psychotherapy sessions, that he attend a week long assessment and treatment at least quarterly at the PRC, that his practice be monitored by the Physicians Health Committee for a period of three years, that he have a chaperone for all intimate examinations, and that he acquire a professional mentor, among other things. The PRC team leader, who was Respondent's primary clinician, testified at the hearing via telephone. The witness testified that the MDT had been able to determine that they did not believe the Respondent to be a "predator" nor is he a sexually deviant personality. When asked whether the Respondent had accepted responsibility for his actions, the clinician responded that he had accepted responsibility for "his side of the story". His story never did agree with the patient's, and the PRC did not contact the patient directly. The clinician testified that, were the patient's story determined to be the correct sequence of events, the PRC recommendations would change. The clinician stated that, were that the case, the MDT would insist that Respondent remain in an intensive treatment program, perhaps eight to ten weeks as an inpatient, then a reduction to a less intensive treatment plan. The clinician testified that the MDT was aware that the patient is mentally disabled and, hence, more at risk for predatory behavior. However, the clinician

reiterated that his team could find no evidence of anti-social or predatory behavior with respect to the Respondent.

Respondent produced testimony from his treatment therapist in Rhode Island. The therapist testified that he has been seeing the Respondent once per week since February 28, 2003, that he anticipates lengthy ongoing therapy, and that it is too early for him to predict a re-occurrence of the Respondent's boundary transgressions.

The Physicians Health Committee recommended that Respondent continue his weekly therapy sessions, that he have an additional evaluation at McLean Hospital to further assess his safety to practice medicine, and that he be prevented from practicing medicine until that evaluation is completed (State's 8).

CONCLUSION

The Board, after considering all of the evidence and seeing and hearing the witness testimony presented, has determined that the testimony of the patient is extremely credible, whereas that of the Respondent is lacking in candor. The Board specifically finds herein that the Respondent's conduct in transgressing doctor/patient boundaries is a grievous act constituting unprofessional conduct in the practice of medicine. The degree of unprofessional conduct is enhanced by the Respondent's lying before the Investigating Committee, at the Professional Renewal Center and under oath at this hearing. The Board firmly believes and finds that the Respondent's actions toward this patient were pre-meditated and intentional. Were it not for the cell phone records found by the State, the Respondent would have continued to rely on his letter of utter denial of the events, thereby promoting the notion that the patient's schizophrenia was to blame for his fantasies. By virtue of his J-1 visa, the Respondent is required to practice medicine in an

underserved area where patients might not be aware of the parameters of the doctor/patient relationship. Respondent poses an undue risk to patients at this time.

ORDER

1. The medical license of Gandhi Drak is hereby **REVOKED** forthwith;
2. The Respondent may not apply for re-licensure for a period of at least eighteen (18) months from the date hereof;
3. That should the Respondent re-apply for licensure after that period, the Board shall be under no obligation to grant Respondent's application. Upon re-application, the Respondent shall, at a minimum, submit supporting documentation of intensive ongoing therapy that addresses his boundary transgressions and his lack of candor. In addition, should the Board be inclined to grant Respondent's application, the Board may require such other reports and/or limitations on Respondent's license as it deems appropriate at that time.

Entered this 23 day of April, 2003.

Stephen A. Fanning, D.O.
Chair, Hearing Committee
Board of Medical Licensure & Discipline

Assented to as to form and substance:

Patricia A. Nolan, MD, MPH
Director of Health

CERTIFICATION

I hereby certify that I have mailed a copy of the within Administrative Decision, postage prepaid, to Joshua Carlin, Esquire, 155 Westminster Street, Providence, RI 02903 and also to William F. White, Esquire, 155 Westminster Street, Providence, RI 02903 on this 28th day of April 2003.

Carole Allsworth